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## CHAPTER 7

## CONFINEMENT, RELEASE, TRANSFER

SECTION 1. CONFINEMENT REGULATIONS

7101. PURPOSE OF CONFINEMENT. An individual is sentenced to confinement as punishment and as a deterrent to other individuals. The sentence to confinement expresses the retribution demanded by the society that the individual offended and removes offenders from society for a specified period. The confinement period should be oriented towards the rehabilitation of the prisoner.

7102. DEFINITION AND CONSTRAINTS

1. Definition. Confinement is the physical restraint of a person (Section 809.a of reference (a)).

a. Pretrial. Confinement may be imposed before trial in accordance with article 7102.2a of this manual.

b. Detention. A service member may be detained pending the initial disposition of a case. Detention may be used when there is probable cause to believe an offense has been committed by the member, and circumstances indicate that temporary confinement is needed for public safety or the well-being of the service member. See article 2101.3 for the length of time a member may be retained in detention.

c. Post-trial. Confinement may be imposed after trial as a result of a court-martial or to confine a probationer prior to vacation of a suspended sentence which includes confinement or a punitive discharge.

d. Bread and Water/Diminished Rations. Confinement on bread and water/diminished rations may be imposed as punishment upon personnel in pay grade E-3 or below, attached to or embarked in a vessel.

2. Constraints. The authority to confine persons as provided for in article 7201 is modified or constrained by the following parameters:

a. Pretrial Confinement. Pretrial confinement may be imposed before trial when deemed necessary to ensure the presence of the accused for trial, or upon a showing that there exists a danger that, unless pretrial confinement is imposed, the accused is likely to engage in serious misconduct. Refer to RCM 305 of

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reference (c). This includes intimidation of witnesses or other obstruction of justice, seriously injuring others, or other offenses which pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command, or the national security of the United States. Such confinement shall be based on probable cause and only when lesser degrees of restraint will not suffice. Normally, when pretrial restraint is deemed necessary, moral rather than physical restraint should be considered before any decision is made to use pretrial confinement.

b. Initial Reviewing Officer Notification. Brig officers shall notify the initial review officer and local Naval Legal Service Office/legal service support section within 24 hours of pretrial confinement of personnel.

c. Detention. Temporary confinement under the circumstances described in article 7102.1b shall be only for the purposes specified. Once the reason for detention is no longer applicable, the individual will either be placed in pretrial confinement or released, even though the maximum time permitted for detention has not expired.

d. Probationers may be confined prior to vacation of a suspended sentence which includes confinement or punitive discharge, when there is probable cause or reasonable ground to believe that the service member has committed acts in violation of the conditions of the suspension.

e. Administrative Discharge. A person shall not be placed in confinement based solely on impending administrative discharge proceedings.

f. Special Categories. Officers will be confined in accordance with provisions of article 7103.2b.

g. Other Prisoners. No member of the armed forces may be placed in confinement in close contact with enemy prisoners, or foreign nationals who are not members of the United States armed forces, except as specified in article 7104.7.

h. Acceptance of Prisoner. No member of the staff of a brig shall refuse to receive or keep any prisoner committed to his or her charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him or her, of the offense charged against the prisoner (article 11(a) of the UCMJ) and appropriate medical personnel have certified in writing on the Confinement Order (NAVPERS 1640/4) that the person is physically fit for confinement (see article 7205).

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"Safekeeping" and "protective custody" are not legal reasons for confinement.

i. Punishments. Per article 13 of the UCMJ, no person, while being held for trial may be subjected to punishment or penalty other than arrest or confinement, nor shall the arrest or confinement imposed upon him or her be any more rigorous than the circumstances require. An individual, however, may be subject to minor punishment during such a period for infractions of discipline. The administrative disciplinary measures provided for under this statute are defined in Chapter 5 of this manual.

j. Parole Violator

(1) By Suspension. Suspension of parole interrupts the sentence, unless the parolee is reconfined. A parolee who is not confined during a suspension of parole is not entitled to confinement credit for the period of the suspension; however, the Navy Clemency and Parole Board may authorize full or partial credit retroactively when it either revokes parole or rescinds the suspension and reinstates parole.

(2) By Revocation. The Navy Clemency and Parole Board may revoke parole if the parolee's behavior warrants return to confinement and the necessary due process rights are afforded to the parolee during the revocation process. In appropriate circumstances and upon the request of the parolee, the Navy Clemency and Parole Board may defer executing the revocation for a period of time normally not exceeding one year. If, during the period of this deferment, the parolee commits any further violations of a condition of parole, the Navy Clemency and Parole Board may cancel the deferment, execute the revocation, and reconfine the parolee upon notice to the parolee and without further proceedings. Parolees who have not been reconfined pending parole revocation proceedings will, within 24 hours of receiving notification of the revocation of their parole from their U. S. Probation Officer, return to the naval brig from which paroled.

7103. CATEGORIES OF PRISONERS

1. Legal Status Categories

a. Detainees. A detainee is a person subject to the UCMJ, who has been legally ordered into confinement and who is accused of violating the UCMJ and is awaiting trial or rehearing. This includes those persons who are pending the vacation of a suspended sentence which includes confinement and/or punitive discharge. There is a clear requirement for differentiation in

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programs, primarily in work areas, for sentenced and unsentenced prisoners (United States v. Nelson, 18 U.S.C.M.A. 177, 39 C.M.R. 177 (1969); article 13 of the UCMJ; and RCM 304(f) of reference (c)). Detained personnel in a brig shall be referred to as detainees. As used in this manual, the word "prisoner" includes detainees unless otherwise specified.

b. Transient Prisoners. A person who is held in confinement pending disposition instructions from another command, awaiting transportation to a designated confinement facility, or return to parent unit.

c. Prisoners. Persons tried by court-martial and ordered into confinement are prisoners whether or not the sentence has been ordered into execution.

## 2. Special Categories

### a. Bread and Water or Diminished Rations for Prisoners

(1) These punishments are authorized by article 15 of the UCMJ, and may be imposed only upon an enlisted person in pay grade E-3 or below who is attached to or embarked in a vessel. Confinement on bread and water, or diminished rations, shall not be imposed for more than 3 consecutive days.

(2) The ration furnished a person undergoing confinement on bread and water (B&W) shall consist solely of bread and water. The amount of bread and water shall not be restricted and will be served three times daily at the normal time of meals.

(3) A person undergoing confinement on diminished rations (DIMRATS) will receive three meals daily which will contain no meat, poultry, fish, eggs, butter, milk, sweeteners, desserts, and table condiments, and only one-half rations of all other items of the regular menu. Normal standards of preparation and service of food will be maintained. Water will be the only drink.

(4) Neither B&W nor DIMRATS may be imposed as disciplinary measures unless the medical officer certifies in writing that a deterioration of the prisoner's health is not anticipated as a result of such action.

(5) Prisoners serving sentences of bread and water or DIMRATS will be confined in a cell and will be bound by the procedures set forth for disciplinary segregation cells. They will not be removed for work or physical exercise.

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(6) In the situation where a court-martial orders both confinement and bread and water or diminished rations, the punishment of B&W/DIMRATS does not begin until ordered executed by the Convening Authority (CA). A pre-confinement medical examination shall be obtained before all B&W/DIMRATS punishment, regardless of whether the punishment is a new admission, a continuation of confinement, or a readmission of a person previously released from confinement. No good conduct time is allowed for B&W/DIMRATS punishment. In accordance with RCM 1003(b)(9) of reference (c), confinement on B&W/DIMRATS for 1 day shall be treated as the equivalent of confinement for 2 days, if adjudged in the same sentence with confinement.

b. Officer Prisoners

(1) Officer prisoners include midshipmen, cadets and officer candidates. Preferably, officers should be placed in arrest in quarters, or another suitable place apart from the brig. Where local confinement facilities are inadequate, a request for designation of a place of confinement shall be forwarded to the Chief of Naval Personnel (Pers-84) or Commandant of the Marine Corps (Code MHC). When a sentence to dismissal has been executed, the individual may be confined with, and otherwise handled as, an enlisted prisoner. A report of all officer confinements shall be submitted immediately to the Chief of Naval Personnel (Pers-84) or Commandant of the Marine Corps (Code MHC). In all cases, a telephone report shall be paralleled by message. In the case of pretrial confinement of officers, only the fact that an officer of a certain pay grade (e.g., O-3/O-4) has been confined and a summary of the offenses alleged shall be reported by message. A telephone report will advise name, social security number, etc.

(2) Officer prisoners/detainees will be treated the same as enlisted detainees or prisoners with the following exceptions.

(a) Officers will be berthed separately from enlisted personnel until an approved sentence to dismissal has been executed, at which time they will be berthed with the general population according to their custody classification.

(b) Officers may utilize brig support services areas (e.g., mess decks, library, small stores, etc.) as long as separation from enlisted prisoners and detainees is maintained.

(c) Officers will be required to participate in those phases of the correctional orientation or treatment program determined by the commanding officer or officer in charge to be necessary to assure their control, custody, employment, training

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health, and welfare. When participation is required, it shall be conducted separately from enlisted personnel except in the case of officers whose sentence of dismissal has been executed.

(d) Disciplinary measures allowed are the same; however, they will be determined by the commanding officer directly; a Discipline and Adjustment Board recommendation is not required.

(3) The following specifics apply to all officers in confinement.

(a) They will not exercise any command or supervisory authority over confinement facility personnel while confined.

(b) They will comply with the rules and regulation of the confinement facility to the same extent as any other detainee or prisoner. They will follow orders of all staff members, regardless of rank.

(c) They are not rendered a salute, not addressed by their rank, do not wear the insignia of their rank, and, in order to prevent injury to the officer or others they do not wear ribbons or collar devices at any time except for attendance at court-martial.

(d) When they are transferred from one confinement facility to another, the senior escort will be an officer of equal or higher rank. In cases of emergency, they may be escorted by qualified escorts of any rank.

(e) They are escorted by qualified escorts of any rank when involved in the normal movements carried on by the brig. (e.g., sick call, legal matters, work parties, etc.)

c. Female Detainees/Prisoners. Brigs will not be used to confine female service members unless specifically approved and certified by the Chief of Naval Personnel (Pers-84) or as prescribed in reference (i). This approval will be granted only if the criteria listed in (1) through (4) below are satisfied. Rules and regulations regarding apprehension, arrest, restriction, detention, and confinement shall apply equally to members of both sexes. All female detainees and prisoners are to be incarcerated in military confinement facilities unless a waiver of this policy is approved by a second echelon commander in the Navy or the Commandant of the Marine Corps (Code MHC). Waivers shall be requested on a case-by-case basis for detainees and short-term prisoners (not to exceed 30 days) who, upon approval, may be confined in an appropriate civilian institution

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(usually a federal metropolitan correctional center or jail under contract to the U.S. Marshals Service). Pending decision by the approving authority of a waiver request, such individuals may nevertheless be confined in an appropriate civilian facility for up to 72-hours. Confinement or detention of female service members in naval facilities may be effected when:

(1) There are no service members of the opposite sex confined in the same space at the same time.

(2) Ashore brigs ensure total visual and acoustic separation of males and females confined. Afloat brigs will provide visual separation to ensure adequate privacy during use of the toilet, showering, changing clothes and similar periods of nudity. This will be accomplished by the use of privacy screens/partitions for each head area/facility, shower, etc.

(3) Trained and qualified female staff members are utilized; and

(4) Confinement criteria as directed by this manual are met.

d. Pregnant Prisoners

(1) The care and management of pregnant prisoners confined to a brig shall conform to the requirements of SECNAVINST 1000.10, OPNAVINST 6000.1A (NOTAL), and MCO 5000.12C (NOTAL). Pregnancy does not preclude confinement in a brig as long as appropriate prenatal care is provided and there is a medical treatment facility near the brig which can provide for labor, delivery, and management of obstetric emergencies.

(2) Options available in dealing with pregnant prisoners include:

(a) If the pregnancy of a prisoner presents special or unique situations, it should be noted that the prisoner may request deferment of the sentence to confinement in accordance with RCM 1101(c) of reference (c).

(b) Clemency may be authorized in accordance with reference (e) and article 74(a), Sections 0158 and 0159 of the Judge Advocate General's (JAG) Manual. Under article 6304, clemency in the form of sentence reduction would normally be recommended by the brig only when it is felt that further confinement would not benefit the prisoner and the Naval Service.

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(3) A prisoner considering elective abortion will be permitted to discuss the matter with a medical officer or nurse practitioner and, if desired, with a chaplain or other counselor. Other than offering the services of a counselor, medical officer or a chaplain, brig personnel will not attempt to influence the prisoner's desires regarding abortion.

(4) Title 10, United States Code, Section 1093, prohibits the use of appropriated funds to perform abortions except where the life of the mother would be endangered if the fetus were carried to full term. Current guidance is contained in SECNAVINST 6300.4, BUMEDINST 6300.9, and BUMED message 131001Z Feb 93 (Policy regarding prepaid abortions in military treatment facilities) (NOTAL). Guidance on availability of abortions in military treatment facilities is undergoing review, may be revised in the near future, and should therefore, when consulted, be reviewed for currency.

(5) If a prisoner desires to seek an abortion, she must submit a written request. Except in instances where the life of the prisoner would be endangered if the fetus were to go to term, the abortion must be funded by the prisoner and, unless available in a military treatment facility, be arranged through a civilian facility. Indications for such an abortion will be subject to local law and regulation. Brig assistance will be limited to providing necessary transportation and security for visits to the facility where the abortion is performed and follow-up care is provided. Following an abortion at a civilian facility, the prisoner will be examined by a military or Government-employed or contracted physician to determine the need for additional treatment and follow-up care.

(6) Arrangements for placement of any child born while the mother is in custody must be made as soon as possible after the pregnancy is known. If possible, arrangements should be made prior to the seventh month of pregnancy. It is the responsibility of the expecting mother to decide what care arrangements will be made for her child. Alternatives include placing the child with relatives, in a foster home, or for adoption. The brig will assist the mother in making arrangements with the Naval Legal Service Office and/or Family Service Center. Infants must be moved to the location of placement directly from the hospital. The granting of leave for a prisoner to take her child for placement may be considered; however, if not granted, the person designated to provide temporary care should come to the hospital to receive the child. All expenses involved in the placement of the child will be borne by the individual and not provided by the Navy.



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(7) Following either abortion or delivery, a period of reduced activity is normal. For an uncomplicated abortion, the period of reduced activity would be approximately 72 hours. Following uncomplicated delivery, the normal period of reduced activity is approximately 6 weeks. Reduced activities will be determined by the examining medical officer.

e. Other Than U.S. Military Facilities. A report of all naval prisoners, placed in pretrial confinement or serving a court-martial sentence, in other than U.S. Military facilities will be submitted to the Chief of Naval Personnel (Pers-84) or Commandant of the Marine Corps (Code MHC) as appropriate, in the following format:

- (1) Name;
- (2) Rate or grade;
- (3) SSN;
- (4) Sex;
- (5) Command ordering confinement;
- (6) Offense(s) charged or convicted - include specification(s);
- (7) Date confined;
- (8) Where confined;
- (9) Sentence - include discharge, if any;
- (10) Anticipated release date from confinement or from military control (including administrative discharge, if appropriate);
- (11) Point of contact and telephone number; and
- (12) Remarks.

f. Civilian Prisoners Subject to the UCMJ. Civilians confined under provisions of the UCMJ are subject to the same rules and regulations, and will be accorded the same treatment as military prisoners. Civilian prisoners shall not be required to wear any military uniform or engage in any military or physical training or acts of protocol other than normal civility. They must observe the regulations governing behavior and security control of prisoners. Participation in rehabilitative programs

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is permitted. Civilian prisoners may be assigned appropriate work and may draw health and comfort items if they are without funds or income. A report of the circumstances of all civilian confinement will be immediately submitted to Chief of Naval Personnel (Pers-84) or Commandant of the Marine Corps (Code MHC). The name and SSN of pretrial detainees will be omitted and reported via telephone.

g. Confinement Under Status of Forces Agreement. U.S. military personnel in overseas areas may be confined in naval brigs or specially approved detention facilities if being investigated for, or charged with, offenses against the laws of the host country and the Status of Forces Agreement (SOFA) with the host country requires that the United States ensure the presence of the offender at the trial. The Confinement Order (NAVPERS 1640/4) shall show in the "Remarks" section: "Confined to ensure presence at the \_\_\_\_\_ court in accordance with the SOFA agreement between the United States and \_\_\_\_\_ (Host Country)."

h. Foreign Military Personnel

(1) Confinement of foreign military personnel in naval brigs is normally precluded by Title 22, United States Code, Section 706 unless the President makes a declaration that the confinement of members of a given friendly foreign force is necessary for the maintenance of discipline. Contact the International Law Division, Office of Judge Advocate General, DSN 227-9161, commercial (703) 697-9161, for guidance in particular cases.

(2) Use of naval brigs in instances other than as outlined above will be for short term detention only and will be approved on a case by case basis. Requests for such approval will be forwarded to the Judge Advocate General, International Law Division with information copies to the Chief of Naval Personnel (Pers-84) or Commandant of the Marine Corps (Code MHC).

7104. DESIGNATION OF INITIAL PLACE OF CONFINEMENT

1. Criteria. When the convening authority orders a sentence of confinement at hard labor into execution, that action will designate a place of confinement in accordance with the criteria of this chapter and on the basis of time remaining to be served on the approved sentence, without credit for good time. Designation shall be made in accordance with the type and length of sentence rendered. The Chief of Naval Personnel or Commandant

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of the Marine Corps (Code MHC), as appropriate, will issue specific instructions for designation of places of confinement.

a. Convening authorities and station commanding officers operating briggs may request redesignation from the major claimant of the place of confinement for an individual when any of the following conditions prevail:

(1) The prisoner has previously escaped or attempted escape from the facility, and adequate security to prevent repetition does not exist at that command.

(2) The prisoner has been involved in a serious disorder or act of violence.

(3) The prisoner's behavior is such that he or she constitutes a serious custodial problem, or seriously disrupts the brig program or operation, and the brig does not have adequate segregation capabilities.

(4) The prisoner is a relative or close friend of any facility staff member.

(5) The prisoner is a former staff member of the facility.

b. The convening authority should consider the above factors when designating a place of confinement. Transfers for the above reasons shall be submitted through the major claimant and will be authorized by the Chief of Naval Personnel (Pers-84) or the Commandant of the Marine Corps (Code MHC). Prior concurrence of the convening authority should be obtained if the request for transfer is prior to his or her actions.

2. Pretrial. Prisoners in pretrial status should be confined in the nearest or most convenient brig.

3. Ships. Shipboard briggs may be designated as the place of confinement for Navy and Marine Corps personnel with sentences to confinement of 30 days or less. When these personnel are confined ashore, and have 30 days or less to serve at the time their ship deploys for extended operations, their command shall arrange to have them transferred from the brig and returned to their ship prior to or during its deployment.

#### 4. Use of Civilian Confinement Facilities

a. If no military confinement facilities are reasonably available, civilian confinement facilities may be utilized. See

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RCM 1113 of reference (c). The report required in such case is described in article 7103.2e.

b. The facilities shall normally be the same used by the U.S. Marshals Service for housing federal prisoners of the same legal status, age, and sex. (Usually a federal metropolitan correctional center or jail under contract to the U.S. Marshals Service.) Commanding officers may request the name and location of such facilities by contacting the nearest U.S. Marshals office.

c. For Navy personnel all costs associated with such confinements shall be borne by the confining command. For Marine Corps personnel forward all requests for payment to the Commandant of the Marine Corps (Code MHC) (reference (i)). Subsistence costs for military personnel confined in civilian facilities will be no more than those paid for civilian federal prisoners. Information on these costs can be obtained from the cognizant U.S. Marshals office.

d. Prior to confining military personnel in a civilian facility, the following procedures must be observed:

(1) A determination of the individual's fitness for confinement shall be made prior to such confinement. (See article 7205).

(2) Determine the types and quantities of personal effects and clothing the institution permits. Ensure they accompany the individual upon confinement and are resupplied as necessary.

(3) Ensure that independent review officer hearings are conducted and the individual's defense counsel makes visits to the facility, as needed, to provide assistance to the individual. Command visits will be accomplished at least once weekly. (See article 7208). Command visits may be extended to one every other week with interim telephonic contact for commands more than 50 miles from the place of confinement.

#### 6. Use of Other Military Confinement Facilities

a. Joint usage of military confinement facilities will be conducted in accordance with current DoD directives for consolidation of military confinement facilities.

b. If naval personnel are to be confined in the confinement facilities of another service they will first be processed in accordance with section 2 of this chapter.

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c. Prior to any brig entering into an agreement with another service for joint usage of a facility, two copies of any proposed draft agreement shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps (Code MHC) for review and comment prior to finalization of the agreement. This is to ensure conformance to DoD guidelines on confinement agreements and memoranda of understanding.

#### 7. Foreign Civilian Confinement Facilities

a. Pretrial. Where no military confinement or detention facility is available, foreign civilian confinement facilities may be used for pretrial confinement of naval personnel who are charged with serious offenses against the UCMJ. The following conditions shall be met:

(1) The senior officer present must approve such facilities based upon the adequacy of security features, safety of prisoners, and adequate living conditions.

(2) In each case where a foreign confinement facility is used, a message report will be made in accordance with article 7103.2e of this instruction.

b. Post-trial. When post-trial confinement is ordered, prisoners shall be immediately transferred to an appropriate U.S. military confinement facility.

#### 7105. USE OF NAVAL BRIGS BY CIVILIAN JURISDICTIONS

1. Policy. It is Department of Defense policy not to confine civilian personnel, not subject to the UCMJ, in naval brigs. Exceptions may be granted only by the Secretary of Defense or designee.

2. Procedure. Requests by federal, state or local law enforcement agencies to use a Naval brig or detention facility to confine a civilian should be made in writing by the originating agency at least 7 days before the desired date of detention. Such requests will be staffed through the second echelon commander of the facility and the Chief of Naval Personnel (Pers-84) or Commandant of the Marine Corps (Code MHC), who will coordinate with the Secretary of the Navy. When time does not allow forwarding of written communication, such requests may be processed through the above specified chain of command by facsimile. Telephone requests will be considered only in emergencies.

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3. Guidelines. When such requests are approved by proper authority, the following guidelines apply:

a. Military personnel shall not provide supervisory or security measures such as cell supervisors or escort duties for such prisoners. Civilian prisoners shall remain under the authority and control of non-DoD civilian law enforcement agents at all times.

b. Civilian escorts shall secure their weapons at the weapons locker or other secure space.

c. The prisoner should be confined in an area having a minimum of traffic, and where there will be no contact with military prisoners.

d. If perimeter or exterior security measures are required, they will be provided by the using agency, subject to authorization of the commanding officer.

e. If there is an attempt to breach security, and if it becomes imperative for the personnel guarding the prisoner to have their weapons to protect the prisoner's life, the weapons will be returned and they may be taken into the cell block. If this situation arises, the Chief of Naval Personnel (Pers-84) or Commandant of the Marine Corps (Code MHC) shall be notified immediately by the most expeditious means.

4. Support. The following are authorized support on a reimbursable basis, insofar as possible:

a. Cell/housing space;

b. Food for staff and prisoners; and

c. Medical care on an emergency basis until appropriate transfer can be arranged.

## SECTION 2. CONFINEMENT PROCEDURES

### 7201. AUTHORITY TO ORDER PRETRIAL CONFINEMENT

1. Officers/Midshipmen/Cadets/Civilians. A commissioned officer, warrant officer, midshipman/cadet, or a civilian may be ordered into arrest or confinement only by a commanding officer exercising command authority over him or her. This authority may not be delegated (RCM 304(b) of reference (c)). Orders to confine may be written or oral and may be delivered in person or by another commissioned officer.

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2. Enlisted Personnel. An enlisted person of the naval service may be ordered into arrest or confinement by an order, written or oral, of any commissioned officer and delivered in person or through any other person subject to the UCMJ. Commanding officers may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted persons of their command, or subject to their authority, into arrest or confinement (RCM 304(b) of reference (c)). However, this authority is normally restricted to commissioned officers.

3. Other Armed Services. Members of other armed services may be ordered into arrest or confinement by members of the naval service, as limited above, provided contact is made with the offender's commanding officer by the most expeditious means requesting confirmation of the status of the member and the disposition to be made in the case. The record of the call or message will be held in a pending status until a responsive answer is received and acted upon. A tracer shall be dispatched if no answer is received within 24 hours and an information copy of the tracer shall be forwarded to the appropriate higher authorities listed below:

- a. Chief of Naval Personnel
- b. Commandant of the Marine Corps (Code MHC)
- c. Deputy Chief of Staff for Personnel, USA
- d. Military Personnel Center, USAF, Randolph AFB, Texas
- e. Commandant of the Coast Guard

4. Civilians. Civilians confined under provisions of the UCMJ may be confined only under the conditions described in article 7103. Confining civilians being detained for, or convicted of, offenses against civilian criminal codes is generally precluded by Title 18, United States Code, Section 1385, but exceptions are possible under conditions and procedure prescribed in article 7105.

5. Status of Forces Agreement. Naval service personnel may be held in brigs pending action by a foreign civil court under the conditions prescribed in article 7103.2g.

6. Foreign military personnel may be confined in naval brigs only under the conditions prescribed in article 7103.2h.

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7202. PRETRIAL CONFINEMENT

1. Notification and Action by the Commander

a. Unless the commander of the prisoner ordered the pretrial confinement, the commissioned, warrant, noncommissioned or petty officer to whose charge the prisoner was committed shall, within 24 hours after that commitment, provide a report to the commander including the name of the prisoner, the offenses charged, and the name of the person who ordered or authorized confinement.

b. This report may be made by any means. Ordinarily, the immediate commander of the prisoner should be notified. In unusual cases, any commander to whose authority the prisoner is subject may be notified.

2. Advice to the Accused. If done by a member of the brig staff, shall consist of the following:

a. The nature of the offenses for which held (article of the UCMJ and a brief explanation).

b. The right to remain silent and a warning that any statement he or she makes can be used against him or her in disciplinary proceedings.

c. The right to counsel.

d. The procedures by which pretrial confinement will be reviewed. (Recommend this portion be prepared for the brig by local legal officers. Further recommend that a, b, c, and d be typed on 5x8 cards to be read by the brig staff to the prisoner(s)).

e. Notification and acknowledgement of the requirements contained in articles 7202.2.a, b, c, and d will be accomplished using the format contained in appendix A-118, and shall be signed by the person being placed in pretrial detention and the staff member explaining the above provisions. This notification and acknowledgement shall then be made a permanent part of the detainee's brig record. Notification will be completed at the time of confinement.

3. Inform Parent Command. If the person is confined by other than that person's commanding officer (i.e., a straggler returned to the ship's homeport when the ship is deployed), the brig should have a standard message format prepared for informing the person's parent command of pretrial confinement.



7203. CONFINEMENT ORDER. A properly completed confinement order (NAVPERS 1640/4) with details of offense(s) and medical certification of fitness for confinement must accompany the offender to the brig at the time of confinement, except in an emergency. Other services may present a DD 497. If used, it must be accompanied with a medical certification of fitness for confinement. Details on proper completion of the confinement order may be found in article 8109. If the confinement results from a sentence adjudged by a court-martial, the confinement order will be accompanied by a report of trial signed by the summary court-martial, or by the trial counsel of the special or general court-martial, that imposed the punishment.

7204. RECORDS

1. The following individual records shall accompany all offenders to the brig at the time of confinement:

- a. Health record
- b. Dental record
- c. Reports of results of trial of personnel serving sentences of confinement, including pretrial agreement information.

2. Service records and pay records for Navy personnel only

a. Shall be transferred in accordance with article 1850300 of reference (o). Those being confined to serve the nonjudicial punishment of confinement on B&W or DIMRATS. Commands should provide to the brig at the time of confinement a machine copy of any portion of the record required for their review process.

b. Marine Corps prisoners serving a sentence to confinement and who are transferred by service record to the command responsible for the brig in which the prisoner is confined. (See article 7402).

7205. MEDICAL EXAMINATION/INITIAL EXAMINATION

1. Initial Examination. Before acceptance of persons for confinement, they shall be examined by qualified medical personnel to determine fitness for confinement to identify any medical problems, and to provide recommendations to the brig regarding appropriate medical care. The member's medical record,

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when available, shall be provided to the examining medical personnel at the time of the pre-confinement medical examination.

a. Medical officers, nurse practitioners, and physician assistants can perform confinement physical examinations. Medical screening for brig confinement may be performed by a hospital corpsman after regular working hours when a qualified medical examiner is not available. The brig medical officer or other medical officer designated to supervise medical services for the brig shall designate those hospital corpsmen qualified to perform this interim medical screening. The prisoner will be examined by a qualified medical examiner within 24 hours after confinement. A sentence to confinement on B&W/DIMRATS may be executed only if a medical officer examines the accused and the place of confinement and certifies in writing that service of such sentence will not, in the medical officer's opinion, produce serious injury to the health of the accused. The prisoner should be examined at a MTF whenever possible. When examined at the place of confinement, the medical examiner will be provided an appropriate space and facilities to conduct a competent physical examination.

b. A pre-confinement medical examination indicating fitness for confinement must be certified by the medical examiner on the confinement order. Physical limitations to full duty performance should be so specified in writing by the examiner. The examining official shall note on the original form the presence of cuts, bruises, or unusual marks. Females will be given a pregnancy test and the results noted on the confinement order. Persons ordered into confinement displaying irrational or inappropriate behavior which is symptomatic of mental disturbance or of the effects of hallucinatory substances, shall be referred to a physician who will determine the requirement for hospitalization. The provisions of NAVMEDCOMINST 6520.1A (NOTAL) will be followed when dealing with prisoners with suspected suicidal ideations or behavior. Also refer to article 4205.4.

2. Recertification. Recertification of fitness for confinement is not required except for cause. Any interruption of confinement for periods over 24 hours will necessitate a new physical examination. Examinations may be requested for shorter periods when circumstances indicate. Prisoners transferred between brigs will not require a new medical examination unless unusual circumstances exist. Any prisoner returning from emergency leave regardless of length of leave shall have a recertification of fitness for confinement at the time of confinement.

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3. Refusal To Take Confinement Physical. If a service member refuses to allow authorized medical personnel to perform the initial or recertification physical examination:

a. The individual shall be directly ordered to undergo the examination.

b. If the order is refused, it is acceptable for medical personnel to make a determination regarding fitness for confinement from medical records, audible information, and what they are able to observe. The individual's refusal and the determination of fitness via observation and records shall be noted on the Confinement Order.

c. If medical personnel cannot make the determination of fitness, the individual will be accepted into confinement and rescheduled for the physical exam when brig staff feel it may be successful.

(1) A notation will be made on the Confinement Order that the individual refused the confinement physical and that a physical will be rescheduled when brig staff anticipate it will be successful.

(2) A notation, similar to article 7205.2(b), will also be made stating the reason why a determination could not be made.

(3) The prisoner will be retained in Medical Segregation or Administrative Segregation, as appropriate, pending successful completion of the examination and/or any disciplinary action as may be appropriate.

(4) The prisoner will not be allowed into the general population without a completed and proper medical examination, (e.g., not one based on records review and observation only, etc.).

(5) The prisoners will be quarantined in a medical facility if so ordered by the medical officer.

d. The prisoner may be charged under the UCMJ for failing to obey a lawful order by the medical officer.

7206. LOGISTICAL SUPPORT BY CONFINING COMMAND

1. Uniforms shall accompany the accused to the brig at the time of confinement, and will be provided in accordance with articles 8206 and 8213.

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2. Health and comfort supplies sufficient to last for the period of confinement, or up to 1 month, will accompany the offender to the brig and will be provided by the command ordering confinement. (See articles 8207 and 8211 for details).

7207. INITIAL REVIEW

1. Directive. The determination of the need for continuation of pretrial confinement will be in accordance with RCM 305(h)(2) of reference (c). Unless the prisoner's commander was the officer who ordered the pretrial confinement under RCM 305(d) of reference (c), the prisoner's commander must complete review of the pretrial confinement under RCM 305(h) of reference (c) within 48 hours of confinement. United States v. Rexroat, 38 M.J. 292, (C.M.A. 1993).

2. Local Support. Initial reviews should normally be conducted at the brig. Brig officers will provide timely notification to the reviewing officer. The brig will provide an area for holding such reviews, and every effort will be made to provide an atmosphere and the necessary accouterments for a pre-trial review per RCM 305(i) of reference (c).

7208. COMMAND VISITS

1. Required. Although each prisoner is involved in the program established within the brig, there is a need to provide continuing contact, during confinement, between the prisoner and a representative from the parent command.

2. Purpose. Prisoners who will return to their parent command continue to be the responsibility of that command. Command visits are designed to retain identity with the parent command and to reinforce to prisoners that this remains their primary chain of command.

3. Procedures. Commanding officers shall establish procedures for visiting at least weekly each detainee and each prisoner who will return to the parent command. This visit should be made by a representative of the parent command, (staff non-commissioned officer, chief petty officer or higher) from the prisoner's division with the authority to act in the commanding officer's behalf. When the offender's command is on extended deployment, the Immediate Superior In Command (ISIC) should provide command visits. It is improper to delegate command visit functions unless the confining command is at sea, or is a remotely situated activity. Echelon 2 commanders (major claimants) shall designate those commands or areas that are considered to be remotely situated from brigs for the purpose of command visits, and shall

also determine visit intervals. Chaplains will not serve as the commanding officer's representative to visit prisoners. The chaplain's role in the rehabilitative process, including the visiting of prisoners, has a value distinct from that of being command representative. Documentation of each command visit shall be made a part of the prisoner's permanent record.

4. Notification. Command visits require prior coordination with the brig. For prisoners who may return to duty, if the parent command provides a trained escort(s), certified by the brig, prisoners may be returned to their command for these visits.

### SECTION 3. RELEASE

#### 7301. TEMPORARY ABSENCE

1. Authorization. Temporary absence of prisoners from brigs for investigations, trial, work, and other proper purposes is authorized under custodial procedures when approved by the brig officer. Neither a Prisoner Release Order nor a Confinement Order is required for temporary absence and subsequent return. When the temporary absence is for purposes of trial, and the trial has concluded during such temporary absence, a report of results of trial, signed by the trial counsel of the special or general court-martial, or the summary court-martial before which trial was held, shall be required by the brig upon subsequent return of the prisoner. The Receipt of Prisoner or Detained Person, DD 629, is required when a member from another command takes or accepts the prisoner outside the security perimeter for any reason.

2. Procedures. To ease administrative procedures, limit temporary absences to normal working hours. The time of return of the prisoner to the brig should not extend past normal recall for work parties. If, however, it is necessary to detain the prisoner outside the brig past that time, the prisoner's escort shall call the brig's control center no later than 15 minutes prior to recall and request an extension, citing the reason(s) for delay. Overnight absences are necessary in some outlying areas and are acceptable, providing the brig officer has been notified beforehand and a completed DD 629 noting the overnight authorization is on file at the control center. When a prisoner is absent overnight, the brig officer will determine if a physical reexamination is required. If 24 hours has not elapsed, the brig is responsible for escorting or the support required to obtain the examination.

3. Investigative Services. Prisoners shall not be placed on temporary absence to perform investigative services for a

military or federal law enforcement agency unless authorized by second echelon commander.

7302. HOSPITALIZATION

1. Procedures. In those cases involving emergencies, specialized treatment or evaluation, or psychiatric treatment which cannot be deferred and require hospitalization, the following procedures shall apply:

a. Receipt of prisoner or detained persons (DD 629) shall be used. The DD 629 shall indicate the prisoner's custody grade, offense, expected normal release date and whether the prisoner is considered a threat to himself/herself or to others. The brig shall provide any additional information that will assist the hospital in the treatment and supervision of the prisoner. A copy of the DD 629 shall be provided to the hospital. In the case of emergencies, a staff member from the brig shall remain with the prisoner until the DD 629 is prepared.

b. Prisoners undergoing psychiatric treatment shall remain in the hospital until well enough to return to the brig environment. The brig medical officer should be consulted and a medical care plan established prior to the prisoner's return.

c. Medium-out, minimum, or installation custody prisoners in need of hospitalization should be turned over to hospital security personnel for admission. The hospital will place the prisoner in a restricted ward or within view of the central station and the prisoner's movements off the ward will be closely controlled. All of the prisoner's clothing shall be secured and a special colored hospital gown issued to the prisoner. The prisoner shall muster at least four times daily with the hospital security personnel and will be continuously visible to the central station between taps and reveille.

d. The brig shall, as a minimum, provide a 24-hour watch of maximum/medium-in custody prisoners in need of hospitalization.

e. For maximum custody pretrial detainees, the parent command or the brig shall provide continuous guard of the detainee. The brig can provide training to parent unit personnel used as guards. For other pretrial detainees who are not under 24-hour supervision, upon return to the brig an independent review officer (IRO) review will be conducted to determine if continued confinement is necessary.

f. As soon as prisoners no longer require hospitalization, they shall be returned to the brig for completion of confinement,

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utilizing the DD 629. Prisoners shall not be placed in medical holding companies or on convalescent leave. Prisoners who remain hospitalized upon completion of confinement shall be transferred "Temporary Duty (TEM DU) for Treatment" to the hospital on the scheduled release date.

2. Status. Hospitalization counts day-for-day as time in confinement.

7303. EMERGENCY LEAVE

1. Authority. Emergency leave may be granted to prisoners in accordance with reference (c) or MCO P1050.3F (NOTAL).

2. Procedures

a. Travel and incidental costs of prisoners shall be at no expense to the government. The use of space available government air transportation is authorized. Navy prisoners on emergency leave generally travel without escort, but, if required, the escort's travel expense and other necessary incidentals must be borne by the government. Escorts for Marine Corps prisoners going on emergency leave will be provided by the Commandant of the Marine Corps (Code MHC).

b. Periods of emergency leave shall be considered as time served in confinement and the leave will be charged against the prisoner's leave balance, if any, for the period of absence.

c. The visit should be short in duration, ordinarily 24 hours plus necessary travel time. This period may be lengthened at the discretion of the commanding officer.

d. Prisoners must be carefully briefed on the conduct expected of them while traveling and while at their destination. Written agreements are permissible.

e. Prisoners on emergency leave will be carried on the out-count of the facility.

f. Address and telephone information for prisoners on emergency leave will be verified through the American Red Cross chapter requesting emergency leave. A point of contact (POC) for the brig will monitor the prisoner, as deemed necessary, while on emergency leave.

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7304. RELEASE FROM CONFINEMENT

1. Authority. Any commander of a prisoner, an officer appointed under regulations of the Secretary concerned to conduct the review under RCM 305 of reference (c), or, once charges have been referred, a military judge detailed to the court-martial to which the charges against the accused have been referred, may direct release from pretrial confinement. For purposes of the subsection, "any commander" includes the immediate or higher commander of the prisoner and the commander of the installation on which the confinement facility is located. The commanding officer of the brig or his or her designee (written) shall authorize final release of the prisoner under the following conditions:

a. Upon expiration of the term of confinement, adjusted to reflect clemency or other action, and further reduced by good conduct time earned.

b. Upon direction of proper appellate authority.

2. Release Order. A Prisoner Release Order (DD 367) shall be prepared to effect every final release from confinement. It shall show the prisoner's name, social security number, branch of service, organization, and specific reason for release, over the signature of the authorizing official. A copy shall be retained by the facility.

3. Procedures. Release preparation begins with the prisoner's admission and continues until the individual's return to duty or discharge. The prisoner must be afforded intensive assistance in preparation for release during the later phase of the period to confinement; however, pre-release program personnel must be involved from the beginning in reviewing and planning release needs, e.g., residence, job, treatment, preparation for transfer, etc. The following guidelines are to be followed:

a. The last phase of confinement is essentially administrative; however, pre-release orientation should be included. The pre-release phase should include presentations on what to expect on return to duty or upon return to civilian life, and which agencies can be of aid to the individual in either case.

b. Where sufficient numbers of prisoners are released each week, scheduled release orientations shall be established. Adequate pre-release processing normally requires 1 or 2 workdays for short-term prisoners, a week for longer term prisoners.



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c. Logistical release planning must begin soon enough to allow for completion of all details, and prepare prisoners for their release date. It includes matters such as cleaning and pressing, or laundering of uniforms. If the prisoner is to return to civilian life upon release, appropriate civilian outer clothing shall be provided, if needed. See article 8213.6.

d. Leave pending completion of appellate review may be required for certain personnel whose sentences include an unsuspended punitive discharge. Procedures are set forth in article 3420280 of reference (o), BUPERSINST 1900.9 (NOTAL), and MCO P1050.3F (NOTAL).

e. Payment of a discharge gratuity and furnishing of civilian clothing to personnel being discharged shall be in accordance with article 3610320 of reference (o) or MCO P1900.16D (NOTAL).

f. Prisoners sentenced to confinement of 30 days or less (temporary additional duty (TAD)) shall be immediately returned to their parent command upon release.

g. Navy prisoners sentenced to 31 days' (TEM DU) confinement or more shall be transferred to the Transient Personnel Unit (TPU) or command operating the brig on a "confinement and further disposition basis". (See article 1850300 of reference (o)). If the sentence does not include an unsuspended punitive discharge, or if the member is not facing mandatory processing for administrative separation, then the commanding officer shall make such personnel available to the Chief of Naval Personnel by message at least 3 weeks prior to the normal release date. Follow-up procedures shall be established by the brig to ensure that orders are available at the time of the individual's release, and the member shall proceed directly from the brig to assigned duty station.

4. Return of Personal Effects. When released from confinement and upon receipt of their personal effects, prisoners shall sign the statement, "I acknowledge the return of all my personal effects" at the bottom of the inventory form (NAVPERS 1640/17). The custodian shall then write or stamp, "Account closed on \_\_\_\_\_ (date) \_\_\_\_\_" on the form.

5. Release Dates

a. The release date is the date confinement is completed. It is determined by reducing the full term of all sentences to confinement by proper credits and adjustments as described in

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Chapter 9. Prisoners, except those serving the punishment of B&W or DIMRATS, should be released during normal work hours. Departure from the station should be effected upon the day of release.

b. To facilitate administration, a prisoner whose release date falls on a Saturday, Sunday, or national holiday shall have all necessary administrative procedures completed at least by the workday immediately preceding such days; however, the release will be effected on the actual date of completion of confinement. When a prisoner is to be released on a weekend or a holiday, the prisoner's command is to be notified during the week prior to the prisoner's release.

c. An individual serving a sentence to B&W or DIMRATS shall serve the entire portion imposed unless it is remitted or suspended. These persons will be released on Saturdays, Sundays, and holidays, as applicable. These individuals shall be released to a command representative on the third day.

d. No person shall be held in confinement beyond the normal release date, as defined above, to complete administrative disciplinary punishments, to await transportation, to complete a forfeiture of pay, or because of indebtedness to the government. Conditions placed in pre-trial agreements shall be as specified in article 9313.

#### SECTION 4. TRANSFER AND TRANSPORTATION OF PRISONERS

##### 7401. TRANSFER REGULATIONS

###### 1. Authorization.

a. Transfer of detained prisoners between brigs is not authorized except when transient individuals are being held for further transfer back to or near their parent command or the command to which assigned for disciplinary action. Exceptions to this rule are if an individual's life or safety is seriously threatened or if the court-martial is to be held in a different location from where the accused is presently confined and there is a brig closer to this locale than the present place of confinement. The request for a transfer to accommodate a court-martial must originate with the parent command of the accused and the parent command must bear the cost of all expenses, including escort expenses, involved in effecting the transfer. Intra-claimancy transfers require approval of the major claimants involved and the Chief of Naval Personnel (Pers-84).

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b. Transfers will not ordinarily be made when legal or administrative action is pending against a prisoner.

c. Designation of a place of confinement constitutes authority to transfer a prisoner and to issue TAD orders to escorts.

## 2. Expenses

a. Accounting Data for Escorts. Funding for Navy escorts shall be in accordance with reference (s) and article 075183 of reference (m). Navy escort costs are the responsibility of the activity transferring the prisoner. Funding for Marine Corps escorts shall be in accordance with reference (i).

b. Accounting Data for Prisoners. Accounting data for permanent change of station orders for travel of adjudged or sentenced prisoners will be taken from BUPERSINST 7040.6 (NOTAL) and in accordance with reference (s) for Navy prisoners and reference (i) for Marine Corps prisoners.

3. Confinement enroute for Further Transfer. Returned absentees, deserters, and court-martial prisoners received in transit for further transfer to another brig shall not be joined to the rolls of the command at intermediate stops. A prisoner treatment file need not be prepared for transient prisoners. Transient prisoners who are improperly clothed and will be exposed to public view in the course of their transportation shall be clothed in accordance with service regulations.

7402. Coordination with Receiving Command. Transportation of prisoners between naval brigs will be closely coordinated to effect safe transfer. Transfer of prisoners must be accomplished in the most inconspicuous manner possible.

## 1. Authority

a. Transfer of Navy prisoners will be in accordance with instructions provided by the Chief of Naval Personnel (Pers-84).

b. Transfer of Marine Corps prisoners between correctional facilities and from correctional facilities to the U.S. Disciplinary Barracks, Ft. Leavenworth, Kansas, will be coordinated by the Commandant of the Marine Corps (Code MHC).

## 2. Procedures

a. Transportation will be arranged to avoid arrival at the destination outside normal work hours, except in unusual

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circumstances. Advance notice shall be furnished to the receiving command to arrange for efficient reception processing of prisoners and for any logistical support required by the escorts. Transfer details should be confirmed at least 24 hours prior to shipment.

b. Unless the receiving brig concurs otherwise, prisoner turnovers are made at the receiving brig. The senior escort shall, and other escorts may, as required, remain with the prisoners until they are receipted for by the receiving brig.

c. The transferring brig shall utilize the DD 629 (Receipt for Prisoner or Detained Person) when transferring prisoners. All prisoners can be listed on one form, or one can be prepared for each individual. An original DD 629 and two copies will be prepared. One copy is retained by the transferring brig, and two copies accompany the shipment. A signed receipt is retained by the transferring brig, and the second signed copy is returned to the receiving brig. The original copy of each prisoner's confinement order(s) shall accompany his/her record. There is no necessity for a new physical examination unless the receiving brig has reason to believe it necessary in some individual cases. If the receiving brig desires a new physical, it will be that brig's responsibility to obtain the physical, provide the escorts and originate the paperwork necessary to obtain the physical.

d. The transferring brig will make a copy of the prisoner file to assist in inquiries received after transfer or in case the prisoner file is lost/destroyed in transit.

7403. TRANSFER FROM PARENT COMMAND. Article 1850300 of reference (o).

1. Navy prisoners whose adjudged sentence to confinement is 30 days or less (TAD) without a punitive discharge will be returned to their parent command upon completion of confinement.

2. Navy prisoners whose adjudged sentence to confinement is 31 days or more (TEM DU) confinement shall be transferred to the command operating the brig on a "confinement and further disposition basis." The Chief of Naval Personnel will normally return such prisoners to their original command, unless the member's command requests otherwise or the member has a punitive discharge.

3. Marine Corps personnel serving a sentence are normally returned to their parent command upon release. Reference (i) provides further guidance for the transfer of Marine Corps prisoners.

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7404. MEANS OF TRAVEL

1. Government Air. Maximum use shall be made of spaces available on military aircraft including Air Mobility Command (AMC), administrative, proficiency and reserve training flights. Where available, transportation provided by the U.S. Marshals Service will be coordinated by the Chief of Naval Personnel (Pers-84) or the Commandant of the Marine Corps (Code MHC). Military air and vehicular transportation of maximum custody personnel is preferable to commercial air transportation.

a. General Provisions

(1) Maximum custody prisoners may not be mixed with medium or minimum custody prisoners.

(2) The passenger service officer will be furnished a manifest listing at least 24 hours prior to movement. This list will contain the name, grade, and social security number of all prisoners and escorts. If there exists other data that might affect the security of the movement, it will be made known to the passenger service officer at this time.

(3) All prisoners will be briefed by the brig officer, non-commissioned officer in charge (NCOIC), or petty officer in charge before embarkation, on proper procedures and conduct aboard AMC aircraft.

(4) Prisoners who are in a patient status will normally be transferred by aeromedical evacuation, in accordance with their service's worldwide aeromedical evacuations requirements, AFR 164-5, AR 40-535, OPNAVINST 4630.9C, and MCO P4630.9A. Two escorts will normally accompany each maximum custody prisoner patient while in the aeromedical evacuation system.

(a) The aeromedical evacuation control center, in consultation with the originating physician, will determine the implementation of other policies in this manual affecting the movement of a prisoner in a patient status. However, such determinations will be consistent with security and good order. The medical crew director is responsible for supervising the control of confined patients aboard aeromedical aircraft.

(b) Prisoners determined to be psychotic will normally be moved in a patient status. If aeromedical evacuation is not available, psychotic prisoners may be moved as a maximum custody shipment, and if deemed necessary, with four escorts assigned to each prisoner.

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(c) Prisoners under medication shall have their medication prescribed by qualified medical personnel before transfer. The medication with written directions as to time and quantity of dosage (sufficient for the length of time enroute plus 24 hours after arrival at destination) shall be given to the prisoner escort. The escort will supply the prisoner with medication in accordance with medical directions. Excess medication will be delivered to the command receiving the prisoner and so receipted.

(5) Before embarkation, all escorted prisoners will be thoroughly inspected and relieved of articles considered hazardous to the safety of themselves, to others, and to the aircraft. The officer or NCO in charge of the escort will retain custody of those articles which, although contraband, are not considered hazardous to the aircraft. Prisoners' baggage will also be inspected thoroughly prior to loading on the aircraft.

(6) The area approaching the flight deck or crew compartment will be declared off limits to prisoners. If configuration of the aircraft permits, a separate head should be designated for use by prisoners. Prisoners will remain in their seats at all times except as may be necessary to use the head. No more than one prisoner will be allowed to move to the head at any time.

(7) Escort personnel will be thoroughly briefed on their responsibilities and procedures and a seating plan developed to ensure maximum surveillance of prisoners and security.

(a) Escorts of maximum custody prisoners may retain their weapons and ammunition when authorized by competent authority and approved by the aircraft commander. Otherwise escort personnel will be unarmed at all times. Their weapons and ammunition will be stored in a locked container not accessible to the prisoners.

(b) Each prisoner escort will be equipped with one set of handcuffs. Normally, handcuffs will be removed while the aircraft is in flight. However, unruly or dangerous prisoners may be restrained with handcuffs while in flight. Prisoners will not be hand cuffed to any portion of the aircraft.

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b. Maximum Custody Requirements

- (1) Two escorts will be furnished for each prisoner.

NOTE: In cases where more than one maximum custody prisoner is being moved to the same destination, and trained Army/Marine Corps Military Police, AF Security Police, Navy Master-at-Arms rates, or corrections personnel are used as escorts, this requirement may be reduced to one escort per prisoner plus one escort in charge. The following additional requirements apply.

- (2) One chief petty officer, senior non-commissioned officer, or above, in charge for five to nine prisoners plus one additional escort.

- (3) One officer or one CPO/SNCO in charge per 10 or more prisoners plus one additional escort.

- (4) No more than two maximum custody prisoners are moved on a single flight.

- (5) Maximum custody prisoners will be escorted at all times by two escorts when it is necessary for them to leave their seats.

- (6) At a minimum, each prisoner will be hand-cuffed during flight operations. Additional restraints (leg, waist, and/or hand irons) may be used based on the assessment of the prisoner's escape risk or danger to themselves or others.

- (7) Removal of restraints is permitted only when the escort determines such action is not detrimental to the safety and security of the aircraft and its passengers. Handcuffs are removed only long enough to use the head facilities, eat a meal, or complete other actions deemed necessary by the escort(s).

c. Medium Custody Requirements

- (1) One escort per two prisoners. NOTE: When trained Army/Marine Corps Military Police, AF Security Police, Navy Master-at-Arms rates, or corrections personnel are used as escorts, this requirement may be reduced to one escort per three prisoners plus one escort in charge. The following additional requirements apply.

- (2) One E-6, or above, in charge per five to 14 prisoners, plus one additional escort.

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(3) One officer or one CPO/SNCO in charge for 15 or more prisoners plus one additional escort.

(4) Medium prisoners will be escorted at all times when it is necessary for them to leave their seats.

(5) When the size of the group warrants additional restraints, restraints are authorized.

d. Minimum Custody Requirements

(1) One escort per five prisoners plus one escort in charge. The following additional factors should be considered.

(2) One E-6, or above, in charge should be provided per 10 or more prisoners plus one additional escort.

(3) Minimum custody prisoners do not require escort while moving about the aircraft; however, they will be monitored at all times.

(4) Minimum custody prisoners need not be restrained.

2. Commercial Air. Chartered commercial air shall be used to transport groups of prisoners whenever possible. Groups of more than eight prisoners will not be transported on regularly scheduled flights. Federal and state laws, airline regulations and instructions issued by the Department of Defense and the Department of Transportation, must be adhered to in relation to the use of armed guards, carrying of weapons, number of escorts required, etc., on commercial aircraft.

a. General Provisions

(1) At least 24 hours prior to boarding prisoners on commercial aircraft, the person in charge will coordinate, with a responsible representative of the air carrier, i.e., the duty supervisor in charge of passenger service, the pending transfer of prisoners and the plans for complying with specific air carrier requirements. The air carrier will be notified of the identity of the escorted person(s) and the flight on which the prisoner(s) will be carried.

(2) Commercial transportation should not be used in those cases where the commanding officer has determined that a prisoner is a threat to safety of others or that the escape risk is such that the arming of the escort and the use of restraining devices are necessary to assure delivery.



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(3) The senior escort will assure the air carrier that the escorted prisoner has been inspected, and that the escort has adequate restraining devices that can be used in the event the escorted prisoner needs to be restrained during flight.

(4) The escorts will request outside seating for the prisoners and themselves in the rearmost passenger seats that are not located in a lounge area or next to or directly across from any aircraft exit. At least one escort will be seated between the prisoner and the aisle.

(5) Escort personnel shall be thoroughly briefed on their responsibilities, procedures, and the seating plan to ensure maximum surveillance and control of prisoners.

(6) Prisoners will remain in their seats at all times except to use the head facilities. No more than one prisoner will be allowed to move to the head at any one time. They will be escorted and kept under surveillance during trips to the head.

(7) Escorts will inspect and authorize food, beverages, and eating utensils provided by the airlines to escorted prisoners.

(8) Neither the escort nor the prisoner will drink intoxicating beverages.

(9) Escorts and the prisoner(s) will request to board before all other passengers and will deplane after the terminating passengers leave the aircraft.

b. Specific Provisions

(1) Each prisoner considered dangerous, or in a maximum custody status, will be escorted by two or more escorts and adequately restrained throughout the flight. No more than one dangerous or maximum custody prisoner shall be transported on the same scheduled commercial aircraft.

(2) Medium custody will require one escort per prisoner plus one escort in charge unless an exception is granted in writing by the commanding officer. No more than five medium custody prisoners will be transported on the same commercial aircraft.

(3) No more than eight prisoners (total) will be transported on the same commercial aircraft.

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3. Rail and Bus. The use of rail or bus is authorized; however, these are not considered as desirable as air transportation because of the distances, time involved, need for additional escorts, the undesirability of exposing the prisoner to public view, and the security risk involved at each stop. If the size of the drafts warrant, a chartered bus has many advantages. Chartered buses should be equipped with a toilet to eliminate comfort stops with resulting display of prisoners to public view and the inherent security risk involved. Box lunches are recommended to eliminate stops for meals.

4. Government Vehicle. A government-owned bus or other vehicle should be used for short trips. A frequently-used bus or vehicle should be equipped with security screens for protection of escorts and driver. Buses should be equipped with a portable type toilet to eliminate comfort stops.

5. Prisoners from Overseas. Prisoners from overseas should be transported by naval vessel or military aircraft, if space is available, under the same escort requirements cited in article 7404.1. Qualified and trained escorts shall be assigned prisoners being returned to CONUS. Prisoners should be delivered to the command located at or near the port of entry that operates a naval brig as a part of their assigned tasks.

#### 7405. ESCORTS

1. Requirements. Prisoner transfers will be performed only by personnel who have had specialized training and experience in escort duty. Escorts have specific responsibilities for the secure custody and safe delivery of prisoners. Clear and detailed written instructions should be provided escorts to ensure proper delivery. Escorts shall be carefully selected for maturity and ability to handle emergencies. They shall be thoroughly indoctrinated prior to assignment. Commands with frequent prisoner movements should provide a pool of escorts and formalize their training and each trip should include at least one escort who has been over the same route by the same transportation. When transporting maximum security or serious behavior problem prisoners, the brig officer should recommend that a member of the staff who knows the prisoners be included in the group of escorts. In all cases at least one escort will be of the same gender as the prisoner. Medical personnel should be included as an escort in transporting a prisoner who is envisioned as needing medical care. When transporting an officer prisoner at least one escort will be an officer of equal or higher rank than the officer prisoner.

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2. Outside Appointment Escorts. Escorts are required to escort prisoners to outside appointments and will be provided either as part of the brig staff or by the activity requesting prisoners for trial or administrative and legal appointments. The requesting activity should provide their own escorts, properly trained and qualified in accordance with article 7406. Prisoner escorts will not be required to carry nightsticks or other weapons.

3. Cross-country Escorts. Brig personnel (in Navy facilities) should not be used to pick up or deliver stragglers, absentees, or deserters. For Marine Corps, these duties are normally performed by Marine Corps Corrections Specialists assigned to the Marine Corps Absentee Collection Unit.

4. Armed Escorts. The arming of escorts and use of instruments of restraint in the transfer of prisoners shall be avoided except in case of maximum custody prisoners whose escape has been determined as posing a threat to life, personal injury, or destruction of property. With the specific approval of the commanding officer, prisoners may be placed in restraint and under armed escort when it has been determined that the following procedures, in order of precedence, will not suffice:

a. Assignment of additional escorts within feasible limits. Prisoners not under restraint and escorts unarmed.

b. Utilizing restraining devices appropriate to the circumstances. Escorts will be unarmed.

c. Under no circumstances will escorts be armed unless restraining devices are being used and proper authority decides armed escorts are needed. When firearms are carried they must be kept in a safe and secure place or on the person of an individual who will not, during the entire trip, come in direct contact with the prisoner. Firearms must not be carried by an escort within a car, bus, aircraft, or train unless positive precautions have been taken to ensure avoidance of contact between prisoner and escort. Escorts aboard regularly scheduled airlines will be armed only for maximum risk prisoners and must comply with Federal Aviation Administration (FAA), military and airline regulations.

5. Ratio. Guard/prisoner ratio should be determined by the transferring command. The ratio should be based on the custody classification of the prisoner being transferred and the type of transportation to be used, according to the preceding guidelines.

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6. Restraint. Under no circumstances shall a prisoner be restrained by being secured to any portion of any type of transport.

7. Security Procedures. Escorts are responsible for security enroute to the destination. Prisoners shall be inspected by the escorts prior to departure to ensure that they have no contraband items. Items that prisoners must not have in their possession are identification cards, money, sharp instruments, tools, keys, etc. Supervision must be continuous during transportation to prevent the prisoner from obtaining contraband items that may aid in taking hostages or hijacking the vehicle used. The officer or escort in charge should be present when prisoners are dressed out. No part of the body where contraband might be concealed is to be overlooked. The hair, mouth, between the fingers and toes, soles of the feet, as well as all bandages, dentures, custom-built shoes, canes, crutches, artificial arms and legs, etc., will be thoroughly inspected. When the inspection is completed, an entirely different outfit of inspected clothing should be furnished. Great care must be taken to ensure that the prisoners do not acquire any unauthorized items after the inspection has been completed.

8. Illness Enroute. In the event a prisoner becomes ill enroute with no medical assistance available, arrangements should be made for examination by a qualified medical officer as soon as possible. If the prisoner is unable to continue the trip, he or she should be taken in order of preference to the nearest military hospital, federal hospital, or civilian hospital and a receipt obtained for the prisoner. The escort shall immediately contact the command, from which the prisoner is being transferred, for further instructions.

9. Loss of Prisoner in Transit

a. Death. If a prisoner should die in transit notify the driver, conductor, or pilot immediately. The coroner, the Federal Bureau of Investigation (FBI), nearest available law enforcement agency, and naval authorities shall be notified as soon as possible. Notify the Chief of Naval Personnel (Pers-663) regarding the death of a Sailor and the Commandant of the Marine Corps (Code MHP-10) regarding the death of a Marine.

b. Escape. If a prisoner escapes while being transferred, the officer or escort in charge will exhaust resources immediately available in apprehending the prisoner, then take immediate action to contact the nearest law enforcement agency. Under no circumstances should supervision of other prisoners be relaxed in order to pursue an escaping prisoner.

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10. Trip Report. A written report shall be submitted by the senior escort at the conclusion of the trip if anything unusual occurred during the trip. This report shall be submitted to the commanding officer of the brig at the point of origin.

7406. ESCORT TRAINING. Escorts from the brig staff will receive the same training as all other staff members. Escorts furnished by other commands shall be trained and certified as qualified by the brig training supervisor prior to assumption of duties. A specialized training course consisting of not less than 1 nor more than 2 days, which includes a proficiency test, shall be successfully completed prior to certification as a qualified escort. All personnel assigned to escort duties shall be thoroughly trained in the safety and proper use of restraining devices in the performance of escort functions. A prisoner Escort Identification Card (NAVPERS 1640/18) shall be issued upon completion of training. Annual recertification is required and certification may be revoked at the brig officer's discretion.

7407. TRANSFER OF LONG-TERM PRISONERS

1. Transfer to a Military Long-Term Confinement Facility

a. Consolidation of Corrections Within the Department of Defense. The Secretary of the Army has been designated as the Executive Agent for incarceration of DoD military long-term prisoners. In most cases the U. S. Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, will be the designated place of confinement for those long-term prisoners who will remain under military control.

b. Criteria. Criteria concerning the transfer of long-term prisoners from naval custody will be issued by the Chief of Naval Personnel (Pers-84) or the Commandant of the Marine Corps (Code MHC).

2. Transfer to the Federal Bureau of Prisons (FBOP). Transfer of prisoners to the FBOP will be on a case by case basis. In the event that special circumstances dictate a need for a special request, the following criteria apply.

a. Criteria. Prisoners who have a punitive discharge approved by the convening authority and who will have more than 1 year's confinement remaining after arrival at the institution, may be recommended for transfer to the Federal Prison System. The initial review by the Naval Clemency and Parole Board must have been completed within the first year of confinement.

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b. Procedures. Requests for the transfer of a prisoner from a brig to a federal penal or correctional institution will be forwarded to the Chief of Naval Personnel (Pers-84) and the Commandant of the Marine Corps (Code MHC), as appropriate, for decision and coordination with the FBOP. The request, as a minimum, shall include two copies of:

- (1) Naval Referral Abstract;
- (2) Commitment information and sentence computation;
- (3) Current Progress Summary Data (DD 1477);
- (4) Admission Classification Summary (DD 1476);
- (5) Court-martial order and two copies of any; supplementary court-martial orders
- (6) Prisoner Assignment and Clemency Board Action (DD 1479);
- (7) Results of Trial letter;
- (8) Psychological evaluation; and
- (9) The most recent progress report and a copy of the transfer order will be forwarded to the Naval Clemency and Parole Board.

c. Records. Transfer of records will be directed by the Chief of Naval Personnel (Pers-84) and the Commandant of the Marine Corps (Code MHC).

d. Personal Property. Personal property will not accompany prisoners while they are being transferred to the FBOP institutions. Personal property is limited to essential items only and will be mailed directly to the designated institution. these items should fit into a cardboard box no larger than 15"x12"x10'. All other personal property is to be shipped home by the prisoner.

### 3. Psychiatric Transfer to the Federal Bureau of Prisons

a. Criteria. Certain prisoners requiring long-term psychiatric treatment may be transferred to a Federal psychiatric treatment facility.

b. Preliminary Determination For Transfer. If the commanding officer of a Consolidated/Marine Corps Brig determines

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that a sentenced prisoner suffering from a mental disease or defect requires inpatient psychiatric care or treatment beyond what is available at the Consolidated/Marine Corps Brig or from the local medical command, the commanding officer will notify the prisoner in writing of his/her intention to seek transfer of the prisoner to the custody of the Attorney General for care and treatment in a suitable facility.

c. Action on Preliminary Determination

(1) Once a prisoner is provided the notice prescribed in article 7407.3b, the commanding officer of the Consolidated/Marine Corps Brig will request that the area General Court-Martial Convening Authority (GCMA) convene a hearing to determine whether the prisoner should be transferred to the custody of the Attorney General for care and treatment in a suitable facility. The request will state the factual basis for the commanding officer's determination that the prisoner requires care or treatment beyond that available at the Consolidated/Marine Corps Brig and will include all relevant documentation (e.g., sanity board results, psychiatric evaluations, medical treatment files, correctional treatment records, etc.) which provide the basis for the determination.

(2) The GCMA may:

(a) disapprove the request for good cause; or

(b) approve the request and convene a hearing to determine whether the prisoner suffers from a mental disease or defect that requires inpatient psychiatric care or treatment beyond that available at the Consolidated/Marine Corps Brig.

(3) The convening authority's letter will be forwarded to the local Naval Legal Service Officer (NLSO)/Base Judge Advocate/Circuit Military Judge and will state that:

(a) The presiding official will be an officer designated, certified, and sworn as a military judge authorized to try general courts-martial.

(b) The prisoner will be represented by a judge advocate qualified, certified, and sworn to serve as trial or defense counsel at general courts-martial.

(c) The interests of the Government will be represented by a judge advocate designated by the NLSO/Base Judge Advocate.

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(4) The circuit military judge will detail a military judge for the hearing. Upon detail, the military judge will schedule a hearing date, affording reasonable notice to counsel and the prisoner.

(5) The local NLSO/Base Judge Advocate will detail:

- (a) Counsel for the prisoner;
- (b) Government counsel (if required); and
- (c) Court Reporter.

d. Hearing Procedures

(1) The prisoner will be afforded the following rights in connection with the hearing:

- (a) timely written notice of the hearing and of his or her procedural rights;
- (b) a personal hearing before an impartial decision maker;
- (c) opportunity to present testimony and documentary evidence;
- (d) opportunity to confront and cross-examine Government witnesses; and
- (e) written findings.

(2) At the hearing, the military judge will advise the prisoner or his personal representative or attorney, if the prisoner is unable to make a knowing and intelligent acknowledgement of his/her rights, that:

- (a) The purpose of the proceeding is to determine whether the prisoner suffers from a mental disease or defect that requires inpatient psychiatric care or treatment beyond that available at the Consolidated/Marine Corps Brig.
- (b) If the Government establishes by the preponderance of the evidence that the prisoner suffers from such a mental disease or defect, the prisoner may be transferred to the custody of the Attorney General for care and treatment in a suitable facility.



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(c) The prisoner has the procedural rights enumerated in paragraph 3d(1)(a) through (e).

(3) Both the Government and the prisoner will then be afforded the opportunity to present evidence regarding the present mental condition of the prisoner and the necessity, or lack thereof, for transfer to the custody of the Attorney General for care and treatment. This is an administrative proceeding to which the Military Rules of Evidence do not (other than Military Rules of Evidence 301-303 and 501-507) apply. Evidence will be admissible subject to the guidance and limitations applicable to the conduct of formal investigations as set forth in JAGINST 5830.1, Procedures Applicable to Courts of Inquiry and Administrative Fact-Finding Bodies that Require a Hearing (NOTAL).

(4) The hearing officer, within his or her discretion, may direct further examination of the prisoner by a different psychiatrist or clinical psychologist.

(5) The hearing officer will determine whether, by a preponderance of the evidence, the prisoner suffers from a mental disease or defect for which inpatient care and treatment is required beyond that available at the Consolidated/Marine Corps Brig. The hearing officer will make specific written findings, to include a brief statement of the factual basis relied upon for each finding, and will make a recommendation as to whether the prisoner should be transferred to the custody of the Attorney General for suitable care and treatment.

(6) A verbatim transcript of the hearing will be prepared. All exhibits offered in evidence will be attached to the hearing record in the manner normally employed in trial by court-martial.

e. Action upon the Record. The GCMA will review the hearing record and approve or disapprove the findings and recommendations of the military judge. If transfer is disapproved, the hearing record and action will be transmitted to the commanding officer of the Consolidated/Marine Corps Brig for retention in the prisoner's brig file. If transfer is approved, the record will be transmitted, via the Chief of Naval Personnel (Pers-84) or the Commandant of the Marine Corps (Code MHC) to the Attorney General.

f. If the prisoner is to be transferred to the Attorney General, the Chief of Naval Personnel (Pers-84) or the Commandant of the Marine Corps (Code MHC) will coordinate the transfer with the FBOP.

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7408. TRANSFER OF PRISONER RECORDS, FUNDS AND VALUABLES, AND PERSONAL PROPERTY

1. Records

a. Required. When an individual is transferred from a ship's brig to a shore brig or vice versa or between shore brig the following records shall accompany the individual:

(1) Completed service record with all appropriate and necessary service record pages included (Navy personnel only);

(2) Personal Financial Record (PFR) (Navy personnel only);

(3) Three certified copies of the court-martial orders;

(4) One copy of the charge sheet;

(5) One copy of the reviewing authority's action;

(6) One copy of the Results of Trial letter;

(7) One copy of the Prisoner Conduct Record (NAVPERS 1640/8);

(8) One copy of the Prisoner Evaluation Report (NAVPERS 1640/13) (required if sentence is 30 days or less);

(9) One copy of the Admission Classification Summary (DD 1476) (except for prisoners sentenced to 30 days or less confinement);

(10) Medical and dental records;

(11) Receipt for Prisoner or Detained Person (DD 629);

(12) The original Confinement Orders (NAVPERS 1640/4) with medical certification;

(13) Prisoner's current file; and

(14) The most recent progress report and a copy of the transfer order will be forwarded to the Naval Clemency and Parole Board.

Note: The transferring brig should retain copies of brig documents from prisoners' files for 2 years. See section 8115 for disposition of records.

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b. Procedures. Prisoner records required by article 7408.1a shall be collected by the brig and delivered to the escort-in-charge of the prisoner prior to departure. Place all records inside the service record folder and seal in an envelope. Print the prisoners name, social security number, point of departure, and destination on the outside of the envelope. Record contents on a Records Transmittal Form (NAVPERS 5000/64) original and three copies. Distribute original to the receiving command, first copy to the escort-in-charge (receipted by the receiving command), second copy to the personnel officer at the point of departure, and the third copy to the brig (receipted by the escort-in-charge). All envelopes shall be placed in a suitable carrying container along with the original and first copy of the Records Transmittal Form, for delivery to the escort-in-charge.

c. Prisoner Adjunct Files for Confinement Facility Victim/Witness Assistance Program (VWAP). See the applicable portions of reference (p), OPNAVINST 5800.11 (NOTAL), and MCO 5800.15A (NOTAL) for the manner of safeguarding and forwarding a prisoner's adjunct file (containing documents associated with the Congressionally-mandated VWAP) upon transfer of the prisoner. These records, maintained by the Victim and Witness Coordinator, will be held separately from the brig record. It may be combined with the brig record prior to retirement of that record, however it is to be placed in a sealed envelope with the notation "Not Releasable Without Permission of the Chief of Naval Personnel (Pers-84) or the Commandant of the Marine Corps (Code MHC).

2. Funds and Valuables. Funds and valuables of prisoners being transferred shall be inventoried by the brig custodian or assistant, certified by the prisoner's signature, and placed in a separate envelope along with a signed copy of the inventory. The signed original of the inventory shall be retained by the confinement facility at the point of departure as a receipt and a copy given to the prisoner concerned. The outside of each envelope shall be identified with the name, social security number, point of departure, and destination, but shall not indicate the nature or identity of the contents. The receipting process for funds and valuables envelopes in transit shall be recorded on the Records Transmittal Form by making an "FV" or "None" entry following the prisoner's name.

3. Personal Property. Personal property of prisoners shall be inventoried on the Prisoner Inventory and Receipt Personal Effects and Uniform Clothing (NAVPERS 1640/17) and packed in a suitable container (suitcase, seabag, dufflebag, or box) and sealed with a copy of the inventory inside and the name, social security number, point of departure, and designated destination clearly marked on an attached shipping tag or other suitable

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marking which does not deface or damage the container. The receipting for personal property shall be accomplished by memorandum in the same sequence and distribution prescribed for the Records Transmittal Form described above.

4. Receipts. The number of both records and funds and valuables envelopes accompanying the draft shall be indicated on the Records Transmittal Form. Both the senior escort and the receiving facility representative shall receipt only for the proper number of envelopes. New funds and valuables inventories shall be prepared by the designated place of confinement as a part of their receiving process.